

**SUMMARY RECORDS OF THE FIFTH GENERAL MEETING, HELD ON THURSDAY, 18 JULY 2002,
AT 3.00 P. M.**

**H. E. Musa Elayo Abdullahi, the Minister of State for Justice, Federal Republic of Nigeria
(on behalf of the President) in the Chair.**

The meeting took up for consideration the item “**Status and Treatment of Refugees**”.

1. **The President invited Mrs. Toshiko Shimizu, Deputy Secretary-General to introduce the item.**

2. **Mrs. Toshiko Shimizu Deputy Secretary-General** recalled that this item had been on the agenda of AALCO's annual sessions since 1964. A significant achievement of the AALCO had been the adoption of its “Bangkok Principles on Status and Treatment of Refugees” adopted at its Sixth Session held in Bangkok in 1966. Two addenda to supplement these Principles were adopted at the Eleventh Session in Accra in 1970 and Twenty-sixth Session in Bangkok in 1987 respectively.

In early 1990's, AALCO's work Programme on this item focused on elaboration of rights and duties of refugees, establishment of safety zones in the country of origin for displaced persons and preparation of a model legislation on refugees.

She noted that, at its Thirty-fifth session held in Manila in 1996, AALCO had welcomed UNHCR's proposal to commemorate the 30th Anniversary of its 1966 Bangkok Principles and decided to update and revise those principles in light of developments in law and State practices in the Asian and African regions. In order to implement that proposal, a series of meetings were held in co-operation with UNHCR. These included, a Preparatory Meeting in New Delhi in September 1996, followed by a Commemorative Seminar in Manila in December 1996, an Expert Group Meeting in Tehran in March 1998, and an open-ended Working Group Meeting in New Delhi in February 2001. Besides, the AALCO at its Thirty-sixth (Tehran, 1997), Thirty-seventh (New Delhi, 1998), Thirty-eighth (Accra, 1999), Thirty-ninth, Cairo (2000) and Fortieth, New Delhi (2001), sessions considered the reports on these meetings along with the consolidated revised text of the Bangkok Principles, which was progressively reviewed at the above sessions. The revised consolidated text was finally adopted at the New Delhi Session in June 2001.

Subsequent to the adoption of the revised text, a few comments were received from some Member States. All these and earlier comments and reservations made by the Member States were duly reflected in the final text which was forwarded to them on 30th April, 2002.

She further noted with satisfaction that with the adoption of the revised text of the Bangkok Principles an important phase of AALCO's Work Programme on this topic was completed. She requested the Member States to consider the future work programme on this item. A few suggestions had been made by some Member States as well as by the Secretariat which could be found in the Secretariat Document on Pages 7 to 10. The Secretariat would appreciate suggestions from the Member States at this session so that a concrete Work Programme could be worked out.

Finally, she informed the Member States that on 24 May 2002, a Memorandum of Understanding had been signed by H. E. Mr. Rudd Lubbers, United Nations High Commissioner for Refugees on behalf of UNHCR and Amb. Dr. Wafik Z. Kamil, Secretary General, on behalf of AALCO. The MOU formalized the long-established co-operation between UNHCR and AALCO. It provided for exchange of documents, mutual consultations and joint initiatives by both the organizations. She also appreciated the technical and financial assistance of UNHCR which had been extended to AALCO from time to time, and looked forward to strengthening co-operation with UNHCR in planning and implementation of the future work programme on this important item on AALCO's agenda.

3. The **Delegate of India** recalled that this item had been on the agenda of the Organization since 1963. Over the years, a number of significant initiatives had been taken by AALCO in this area. The Secretariat had undertaken various studies on the subject including Model Legislation on the Refugees and the 1966 Bangkok Principles, which were later revised and adopted at the 40th Session, held at New Delhi.

She underscored that the studies prepared by AALCO and discussions on the subject at successive annual sessions had greatly helped Member States and kept them abreast with the latest developments in the field of International Refugee Law. The adoption of the revised Bangkok Principles, as stated in the Secretariat Report was a milestone in AALCO's long journey in this area.

Referring to the proposals enumerated in the document she pointed out that under this agenda item the Secretariat proposed to conduct studies in two areas: (i) durable solutions, and (ii) refugee women and children.

Turning to the first option, she stated that there was a consensus among the international community that the ultimate objective of refugee protection was to help refugees overcome displacement and achieve durable solutions whereby they would no longer be refugees. The three durable solutions namely voluntary repatriation, local integration and resettlement had been identified also in the Bangkok Principles.

Furthermore, the UNHCR had been reviewing measures to ensure a constant focus on durable solutions. She greatly appreciated efforts in this area. However, she was of the view that political and economic constraints limit the access of refugees to durable solutions. While voluntary repatriation was the preferred solution, the refugee reintegration in the host country or resettlement in third country required a comprehensive approach which integrated political, security and humanitarian concerns. Thus, it might not be possible to identify or recommend any legal resolution of these issues. Therefore, her delegation felt that any study for "durable solutions" would essentially involve exploration of political, economic and security concerns of States before a comprehensive approach towards these issues could be developed. These areas, were not amenable to any legal interpretation; therefore, a study in the area of "durable solutions" may not be in the domain of this legal consultative organization. Accordingly, AALCO's role on such issues may commence when the political dynamics of the proffered solutions for refugee problem are settled. In a technical body like AALCO, Member States could take note of the developments in the area but may not be able to contribute in areas which have essentially political and economic dimensions.

Referring to the second option, as regards the protection of refugee women and children, she was of the view that UNHCR had developed various guidelines on the subject. The Initiative Fund for refugee women explored new and innovative ways to involve refugee women in planning and implementation of UNHCR programmes. The ambitious programmes initiated by UNHCR in these areas involved identification and examination of planning and policy issues. However, there were provisions for protection of women and children set forth in many international conventions on which various studies were already available. She urged the Secretariat to identify the existing studies in these areas to enable Member States to seriously consider whether any new study would contribute in this area and then only embark on this project.

She was of the view that the subject of status and treatment of refugees was very crucial and India continued to abide by the international obligations even though it was not a party to the 1951 Convention. The adoption of revised Bangkok Principles was possible only after extensive discussions over a period of four years. Most countries had clearly stated their positions on various subjects.

She recalled that the Secretary-General in his Report on the work of the Asian-African Legal Consultative Organization had put forward certain proposals before the Member Governments on how to make AALCO more useful and effective to serve the Member States; One of the themes suggested by him related to the rationalization of the work programme of the AALCO.

The Secretary-General had recommended that the short time available could be utilized for fruitful discussion on a few selected items instead of considering routine progress reports on which exhaustive discussion had been held in the course of earlier annual sessions.

She fully agreed with the assessment of the Secretary General that in order to keep pace with the changing times and events, it would be desirable that the AALCO's agenda should be moulded accordingly and studies be initiated only in areas where there is substantial development on issues which Member States could discuss extensively.

4. The **Delegate of the Republic of Korea** was pleased to note that the AALCO had made great contributions in the field of international refugee law, particularly the "Revised text of the Bangkok Principles on the Status and Treatment of Refugees" adopted at the 40th Session, it was considered a great achievement. He hoped that the Revision could play an important role to complement the 1951 UN Refugee Convention and its Protocol.

With regard to the general trend on how to address this subject, his delegation recognized with interest that the concept of "refugee" was being extended for the more thorough protection of refugee. He hoped that the concepts of "refugee like situation" and "internally displaced persons" would develop in the right direction, for strengthening of humanitarian protection of refugees.

He generally agreed, that the 1951 UN Refugee Convention and its Protocol should be considered as the main mechanism for the resolution of this issue. Therefore, his Government urged all States who were not Parties to the Convention to accede to it thus fully activating the institutionalized UN forum in the convention. He welcomed the initiative of the Secretariat of AALCO to render technical assistance to those Member States who were not parties to the 1951 Convention and its Protocol.

He was of the view that close co-operation between AALCO and UNHCR would be significant for the future work programme of the Organization. He emphasized that since AALCO had adopted the Revised Text of the Bangkok Principles at its 40th Session, his delegation supported the plan of the Secretariat to focus on the issues of "refugee women and children", taking into consideration that the issue of trafficking in women and children was getting more serious and it entailed the protection of those people as "Refugees".

5. The **Delegate of the Arab Republic of Egypt** stated that the item under discussion was one of the increasingly sensitive topics due to the human, political and legal dimensions which were attributable to it. He welcomed the adoption of the "Revised Text of the Bangkok Principles" at the 40th Session held in New Delhi. It was particularly important because all the views expressed by Member States at that occasion and at the earlier meetings, had been duly reflected in the final text.

Referring to Article 1(7) of the Revised Bangkok Principles which deals with the definition of a refugee, he reiterated the view, that the crime of terrorism should have been included in the text of Article 1(7) of the Principles, as a ground for refusal to grant the status of refugee due to the seriousness of such crimes as recognized by UN Resolutions and Declarations, particularly General Assembly Resolution A/Res/49/60 of 1994 and the Declaration on Measures to Eliminate International Terrorism annexed thereto. He maintained that failure to include the crime of terrorism in the definition left dangerous lacuna in the application of the law.

He felt that keeping in view the definitions in the 1951 Convention and its 1967 Protocol, the 1969 OAU Convention, the 1984 Cartagena Declaration, and AALCO's Bangkok Principles, the definition of the term refugee needs to be reviewed and endeavours should be made to reach a more appropriate definition of the term refugee which could promote protection of refugees and displaced persons.

6. The **Delegate of Indonesia** stated that even though his country was not a destination for asylum seekers, yet it had maintained very close co-operation with the UNHCR. He recalled that the presence of the UNHCR representative in Indonesia started when the Vietnamese boat people went to Indonesia. As

a result of close co-operation with the international community, his country could successfully cope with that great humanitarian crises and found settlement countries for those refugees.

He elaborated that even till date the UNHCR actively worked in Indonesia in close co-operation with relevant institutions among other things for the assessment of status of the many illegal immigrants who arrived there. One of the remaining problems that needed to be addressed in Indonesia was the presence of the East Timorese refugees on its borders. He recognized that without international support the problem of East Timorese refugees could not be addressed properly according to the prevailing international standards. He stressed that it was in the vital interests of Indonesia that the East Timorese refugees be repatriated to their country of origin.

7. The **Delegate of Thailand** congratulated and commended AALCO's Secretariat for its great contribution to the issue of refugees, most notably the adoption of the Bangkok Principles on the Status of Treatment of Refugees back in 1966 and its revised version which was successfully adopted at the last session.

He was of the view that the existing international mechanism might not sufficiently and duly reflect the reality of the refugee problems of today, it was therefore important that AALCO should attach greater importance to the development of the concept of durable solutions in future programmes of AALCO, with special emphasis on addressing the problem of refugees at its root cause. Guidelines may also be appropriately developed to allow the possible involvement of the international Organizations concerned with competence in the field on playing a catalyst role in the promotion of respect for human rights and national legislation in the country of origin, which has fundamental obligations not only to observe the right of its own national to return to their home country but also to receive them.

He also believed, that AALCO could play a positive and useful role in developing the principle of international responsibility and burden sharing under a comprehensive framework which could clearly specify the roles and duties of each country as well as those of other players in the field. The concept of establishment of safety zones for displaced persons in the country of origin which were discussed at the 32nd session of AALCO in Kampala and the concept of standby arrangements for evacuation should be further examined and developed taking into account lessons and experiences learnt from the Kosovo Crisis.

His country could support the initiative of AALCO Secretariat to prepare in particular with the OHCHR and IOM, studies on the topic of "durable solutions" and "refugee women and children". However, it must be ensured that such exercise should mark a clear distinction between the problem of refugees and displaced persons on one hand and the problem of trafficking and smuggling of persons on the other as these problems have different root causes which naturally required different solutions and approaches.

7. Comments submitted by the Government of **Malaysia**:

1. Malaysia has no legislation relating to refugees or asylum seekers. The Immigration Act 1959/1963 regulates the entry and stay of any foreign person into Malaysia.
2. Malaysia is not a party to any international convention or agreement relating to refugees such as the Convention relating to the Status of Refugees 1951 and its 1967 Protocol, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the UN Declaration on Territorial Asylum.
3. Although Malaysia is not a party to or obliged to do so under any international instruments on refugees, Malaysia has nonetheless fulfilled its international obligations to persons who have entered Malaysia claiming to be refugees through special arrangements on humanitarian grounds.
4. In the 1970s, Malaysia experienced a major arrival of Vietnamese boat people on its shores. Malaysia had to host the Vietnamese boat people for more than 20 years before these people were resettled or repatriated. The success of this programme of resettlement and repatriation was achieved through the Comprehensive Plan of Action and the involvement

and co-operation from the resettlement countries, countries of origin and international organizations like the UNHCR. Since then, Malaysia has also agreed to accept and resettle certain refugees who have been accorded refugee status by the UNHCR also on humanitarian grounds.

5. Today Malaysia is still experiencing the arrival of migrants especially from its neighbouring countries like Myanmar, the Philippines and Indonesia as well as from some African and Eastern European countries. The Immigration Act 1959/1963 is still the principal legislation applicable to any person entering and staying in Malaysia. Any person who enters or remains in Malaysia in contravention of the Immigration Act 1959/1963 will be dealt with according to that Act.
6. Malaysia's position in relation to the work of the AALCO on the Status and Treatment of Refugees is as follows:

(a) The Bangkok Principles

It is noted that the Bangkok Principles are merely declaratory and non-binding in character. As such, these principles will be taken as a guide in dealing with refugees who come to Malaysia.

(b) UN Convention Relating to the Status of Refugees 1951

The 1951 Convention is the main international treaty relating to refugees. As of 5.2.2002, there are 140 Member States.

The 1951 Convention defines a refugee as a person who "...owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality, and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country..." (Article 1 (A)(2)).

Article 33 spells out the fundamental protection for refugees, that is the principle of non-refoulement. It states –

"No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

Malaysia has no legislation relating to refugees. The Immigration Act 1959/1963 is the principal legislation governing the entry and stay of any foreign person to Malaysia and it does not define or otherwise provide for a category of "refugee". In general, the Act provides that any person who enters Malaysia in contravention of the Act shall be returned or deported to his country of origin. Due regard is nonetheless given for the safe repatriation of all deportees.

Article 31(1) of the 1951 Convention provides –

"The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees, who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence".

Although Malaysia does not treat such persons as refugees/victims or otherwise provides protection for them, they are generally not prosecuted for immigration offences. The

general policy is to deport these illegal immigrants unless they have committed any other offence under Malaysian law.

The meeting then took up for consideration the item concerning **“Deportation of Palestinians and other Israeli Practices among them the massive Immigration and Settlement of Jews in all Occupied Territories in violation of International law particularly the Fourth Geneva Convention of 1949”**.

9. **Dr. Ahmed Al-Gaa'tri, Deputy Secretary-General** introduced Document No. AALCO/Abuja/2002/S.4 prepared by the Secretariat on this item. He recalled that the item was first placed on the work programme of the Organization at its 27th Session held in Singapore, 1988 following upon a reference made by the Islamic Republic of Iran. Since then it continues to be on the agenda at the successive annual Sessions.

He recalled that the whole of the year 2001 and until now in 2002 the period was marred by the incessant Israeli military campaign of war crimes and state terrorism against the Palestinian people and the Palestinian Authority. The daily killing of Palestinian civilians by the Israeli occupying forces; targeted assassinations of Palestinians, the destruction of Palestinian property, including homes, agricultural lands, roads and Palestinian Authority buildings; extra judicial killings of Palestinians by Israeli forces; repeated incursions by the occupying forces into areas under the full control of the Palestinian Authority; Israeli attacks on Palestinian cities and on Palestinian Authority facilities by tank fire, helicopter gun ships and F-15 and F-16 fighter planes; complete closure and seize of the Occupied Palestinian Territory including Jerusalem, by the occupying Power; severe restrictions on the freedom of movement of persons and goods, including emergency vehicles and supplies; resulting in socio-economic hardship to the Palestinian people; curfews; abductions and detentions, were the countless Israeli brutal activities.

Further, he stated that the Israeli attack on Ramallah was virtually without precedent. Tanks and armoured personnel carriers thrust into the Presidential compound, spreading death and destruction, leaving Chairman Excellency Yasser Arafat marooned in a couple of rooms, without electricity and water, supported by only a couple of aides, cut off from the outside world. This act of the Israelis constituted a flagrant violation of the right of freedom of movement one of the most fundamental right enshrined in the Universal Declaration of Human Rights and the UN Charter. It also defies the principles enshrined in the 1979 International Convention against the taking of Hostages as well as the International Covenant of Civil and Political Rights.

Furthermore, he noted, that the atrocities being committed by the Israeli occupying power were in gross violation of all the international law principles. It had continued with its policies and practices of occupation for almost 35 years. These policies and practices represented grave breaches of international humanitarian law and serious violations of all the principles of human rights. Israel continues to carry out its policies in total disregard for the position of the international community and in total violation of the Charter of UN and relevant Security Council and General Assembly resolutions, resolutions of other UN organs and international as well as regional organizations. The acts being perpetrated by Israel were in contravention of the Fourth Geneva Convention of 1949, Human Rights law, Security Council Resolutions, UN Convention on the Safety and Security of all UN Personnel; freedom of press and media and “land for peace formulas”. It also back tracked on all the international agreements to which it is a party, particularly the principles established at the Madrid Conference and in Oslo and subsequent Agreements.

He also noted that leaders throughout the world were making all efforts possible to put the peace process back on its tracks. The Mitchell Commission's recommendations and the Tenet plan were to be accepted and implemented by both the parties in their totality. It could lead to the possible resumption of the final status negotiations based on Security Council Resolutions, particularly 242 and 328, the Madrid Principles and also the “land for peace principle”.

He welcomed the proposal put forward by the Crown Prince Abdullah of Saudi Arabia. The proposal was based on (a) normal relations and the security of Israel in exchange for a full Israeli

withdrawal from all occupied Arab lands; (b) recognition of an independent Palestinian state with noble Jerusalem as its capital and (c) the return of refugees. The promise represented by 22 Members of the Arab League at its Beirut Summit in March 2002, which endorsed the Saudi Proposal, was a significant turning point which could hold the key for meaningful resolution of the Palestinian problem.

He emphasized that AALCO reiterated that while formulating any agreement the “right of return of Palestinian refugees to go back to ancestral homes in Israel” was often assumed to be the most vexed of all the issues. It should be considered sacred and should not be compromised on any ground whatsoever and resolution 194 (III) of the General Assembly in this regard should be respected. Other core issues that need to be tackled carefully, he stated, were Israeli settlements in occupied territories.

The events of 11 September 2001, he said apparently had encouraged Israel to lead a war of terror on the Palestinians in the Occupied Territories as well as in West Asia. This was of particular concern to the international community. Its latest military actions were widely regarded as an excessively disproportionate use of force that went beyond the requirements of any saber rattling that might induce peace. All these policies of the occupying power further recessed the peace process, which despite its fading prospects, continued to command international support as the only option still open to both the parties.

In conclusion he stated that, the international community as well as AALCO was supportive of the Palestinian determination to uphold the rule of international law and relevant UN resolutions as the main terms of reference concerning the Israeli occupation and in protection of the rights of the Palestinian people. AALCO also reaffirmed the established international consensus on the applicability of the Fourth Geneva Convention to the occupied Palestinian Territory including Jerusalem, as well as to all the other Arab Territories occupied by Israel since 1967.

10. The **Delegate of Palestine** expressed his appreciation to the Secretary-General, Deputy Secretary-General and the Secretariat for their efforts and for presentation of a very elaborate and detailed Report on the item. The conclusion reached therein was important and underpinned the fact that Israeli occupation of the Palestinian territory coupled with Israel's policies and practices remained the underlying cause of the grave situation in Palestine.

He recalled that, Sharon, initiated his assault against the Palestinian people even before he assumed the premiership of Israel. The whole world remembered his assault on the noble sanctuary of Masjid Al Aqsa in September, 2000. In a wave of self-defence and retaliation the Palestinian people rose against Israeli's occupation. It is with Sharon's aggression that the current chain of events finds its roots. To confront the Palestinian stone throwing, the Israeli's armed forces used excessive and disproportionate weapons of mass destruction.

He underscored the fact that the Palestinian people were suffering from misery and were exposed to a barbaric, racist and savage war, waged upon them by Israel, the brutal occupying power, using the ugliest means of murder, assassination and destruction. It was using all these arms and weapons within the framework of its terrorists, bloody and savage war that it was waging against the Palestinian people, cities and towns, villages and refugee camps. Israel was causing havoc and destruction, terror and detention, uprooting of trees and bulldozing of fields and farms, programmed destruction of public and private institutions, security and presidential headquarters, health, educational, economic, social and other infrastructures. He noted with despair that all these fell within the framework of the policy of humiliation, occupation, assassinations, murders, collective arrests and detentions, repeated and daily incursions, siege and closures and forbidding freedom of movement and transportation. In addition, there were the acts of looting and theft, including the expropriation of the revenue taxes during the last twenty-three months, the savage practices of the hordes of colonial settlers on the roads, in the villages and the setting of fire to the crops at harvest times. All these acts, he said were taking place within earshot and eyesight of the whole world and witnessed by International Observers and Delegations of Human Rights.

He emphasized that the campaign of aggression against the Palestinians had resulted in the martyrdom of children. Israel had detained Palestinians, including children. The economic situation in the occupied Palestinian territory had seriously deteriorated almost 70 percent of the Palestinian people lived under the poverty line, resulting from loss of work opportunities because of the continuous and long periods of curfew and siege. Israel had fragmented the occupied Palestinian territory into 227 mini cantons that converted the territory into concentration camps and Bantustans, even after the signing of the peace agreements in 1993 and in spite of United Nations resolutions calling for the stop of settlement buildings in the occupied territories, Israel continued building settlements on confiscated land, in the West Bank. The settlement controls 46% of the West Bank, although the constructed area is 2% and approximately 350,000 Israeli settlers are in the occupied territories. The Israeli colonial settlement is illegal under international laws, the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 1949, of which Israel is a signatory party.

He further emphasized that the comprehensive, just and equitable peace based on the right and justice, remained the Palestinian choice, it is as well the choice of other Arab Nations as manifested by the initiative presented by Saudi Crown Prince Abdallah which was adopted by the Arab Summit in Beirut. Yet the Government of Israel responded to these efforts with fierce military escalation against the people and their national authority in contravention of all signed agreements, international resolutions and every international, regional and Arab efforts exerted to find a way out of the current crisis.

He stated that Israel is occupying now all Palestinian cities and towns and villages and refugee camps in the West Bank, with the aim of re-imposing the military administration of the Israeli occupation army, in accordance with a long-term plan to undermine the peace process, security and stability in our holy land of Palestine and the Middle East Region.

The Palestinians had accepted the solution deemed fit by the international legality and by its resolutions and decisions which stipulated that Israel, the occupying power, should withdraw from the Arab and Palestinian territories to the 4th June 1967 borders in accordance with Security Council Resolutions 242, 338 and 425 as well as United Nations General Assembly Resolution 194 that had presented the solution to the problem of the Palestinian refugees. Israel, however, is continuing, since many decades, its rejection to accept the Resolutions of International Legality on Palestine. Israel placed itself above international laws, violated international laws and resolutions, international humanitarian laws, the International Declaration of Human Rights and the Fourth Geneva Conventions. In addition, Israel reneged on all agreements signed between the Parties, which if implemented in a sincere and honest way on the stipulated dates, would have brought to the region the peace yearned for.

He stated further that, out of the concern to realize just and comprehensive peace in the Middle East Region, Palestine had responded positively, since the Madrid Peace Conference, to all regional initiatives that aimed at realizing peace. However, despite all the efforts exerted, Israel is still rejecting all these efforts. All these efforts are done with the aim of consecrating the system of cantonization and separation that is being imposed on the Palestinian people, land and territory, and Holy Places through illegal settlement, by pass roads and most recently through the security wall – which reminded of the Berlin Wall – that had been built around Holy Jerusalem, as well as, the Electronic Separation Wall. In addition, this action aimed at annexing tens of thousands of Dunums of Palestinian land and at expelling tens of thousands of the people from their villages and refugee camps, thus destroying all their means of survival and existence in their homes, lands and farms which were their only source of livelihood.

He reiterated that justice and reason necessitated that every party should respect its commitments and obligations, accept the resolutions of international legality related to Palestine, to implement the understandings and agreements signed, resume the negotiations from where they ended in Taba, on the basis of the principle of land for peace and in accordance with United Nations Security Council Resolutions 242, 338, 425, 1397, 1402, 1403, as well as United Nations General Assembly Resolution 194 for solving the Palestinian refugee problem. The accurate and honest implementation of these Resolutions was the only way to achieve the peace that safeguards security and stability for all the peoples and states in the region.

He thanked all the Member States of AALCO, for their continued support and solidarity with the Palestinian people and was confident that they would continue their efforts to assist in enforcing the application of international law and United Nations Resolutions to enable the Palestinian people to achieve their inalienable rights, including their right to return, to self-determination and to establish their independent state with East Jerusalem as its capital in conformity with United Nations relevant Resolutions.

11. The **Delegate of the Islamic Republic of Iran** stated that the land of Palestine had become the big Israeli killing field of the innocent. No conference, word and statement could adequately describe the horrifying condition in that killing field at this moment. He wondered what could this Organization and the present gathering do to alleviate the suffering of the Palestinian people. What was our responsibility here? At the time when the United Nations and in particular its Security Council had been rendered futile, a consultative regional Organization could only express the words of sympathy and comprehension.

He recalled that in course of the past decades, Israeli actions and policies had turned the Middle East into a region constantly engulfed in a whirlpool of bloodshed and crisis. He briefly reflected on some of the atrocities that were committed on a daily basis by the Israeli regime against Palestinian people in recent months.

He stated since the September 11 terrorist attacks in the United States, Israeli regime had made the most sinister use of the anti-terrorism climate created and prevailed in the western countries, especially in the US. It unleashed its military and security forces, armed to the teeth with the most sophisticated American weapons, against Palestinian innocent people including children. Merciless killing of hundreds of defenseless Palestinian civilians, deliberate bombardments of residential homes, office buildings, hospitals, assassination of Palestinian leaders, and imposition of blockades on Palestinian areas were clear examples of Israeli state terrorism which many in position of power conveniently chose not to see. The excessive and disproportionate use of force and the policy of collective punishment by Israel against the Palestinian people had been condoned by the self-declared champions of human rights. In the last session of the Commission on Human Rights, which ironically coincided with the massacre of the civilian people in the Palestinian camp of Jenin, the pro-human rights members of the Commission turned a blind eye to the plight of Palestinian people by refusing to support a resolution which had been drafted to condemn Israel for its atrocities committed in the occupied territories.

He further stated that, the ever-increasing tension and level of violence in the occupied territories, as a result of the heavy-handed policy of the present Israeli regime had led to more killings and bloodshed. These actions of the Israeli occupying power, amounted to collective punishment and stranglehold of a whole people under the pretext of security for occupiers. The pursuit of this policy, over the past 20 months, had devastated the Palestinian economy and plunged more families into absolute poverty.

He emphasized that the indiscriminate killing and besieging of the Palestinians negated the Israeli pretence of peaceful intention or desire for pacific co-existence with the Moslems and Christians in the region. The crimes being committed by Israel were numerous and could not be listed exhaustively. Israel's repeated crimes and heavy-handed approach ran counter to all its highly sounding and empty claims of seeking peace.

He underscored the fact that the continuation of the illegal settlement activities in the occupied territories, despite worldwide outcry, figured prominently on the Israeli agenda. The fact that the Israeli regime continued to reject its previous commitments, including the call for complete cessation of settlement activities, was explicitly indicative of the aggressive and expansionist nature of the Israeli agenda and policy.

He emphasized that the consensus opinion, expressed and maintained by the international community over the past decades, stressed explicitly on the applicability of the "Fourth Geneva Convention of 1949" Relative to the Protection of Civilian Persons in Times of War" to all Arab and Palestinian territories. The continuation of illegal acts by the Israeli regime, constituted an intentional

and flagrant violation of this Convention as well as other international instruments on humanitarian issues and human rights, and in total disregard to the numerous UN resolutions and statements. Israel even disregarded its obligations and commitments arising from the agreements which it had willfully entered into.

He recalled that his delegation had submitted this item on the 27th Session of the AALCO and had pointed out that the deportation of the Palestinian people by Israel from the occupied territories, constituted a violation of the principles of international law as well as provisions of international instruments and Conventions such as the Hague Conventions of 1899 and 1907, the UN Charter, and the Geneva Convention on 1949, all of which prohibited deportation as a form of punishment in an occupied territory. The Government of Islamic Republic of Iran continued to believe that these important international instruments were of high validity and relevance especially in conjunction with the Palestinian problem.

The delegate further emphasized that Israeli acts and policies were in blatant violation of the well-established norms and principles of international law and constituted war crimes and crimes against humanity, and the perpetrators of such crimes should be brought to justice. Regrettably, the international community, and in particular the UN Security Council had done little to stop the Israeli armed forces brutal campaign against the civilians. The recent resolutions of the Security Council on the Palestinian situation hardly corresponded with realities on the ground. Therefore, unchecked Israel's acts and policies would but further exacerbate the situation in the occupied territories. The failure of the UN Secretary-General to send the appointed fact-finding mission to the Palestinian camp of Jenin to look into the crimes committed by the Israeli forces had seriously damaged the credibility of this world organization. Israel may and can conceal its criminal acts and atrocities and fabricate the realities, but could not disregard the history and destroy an entire nation.

Despite the aforesaid facts, the Member States of AALCO have great confidence in the courage and resolve of the Palestinian people to counter foreign occupation and resist the inhumane and racist policy of Israel until the achievement of their fundamental rights including the right to return to Palestine and establish an independent Palestinian state with Al-Qos Al-Sharif as its capital.

Finally, he implored other Member States of AALCO to express their sympathy to the Palestinian people, and this could be realized by retaining the present item on the agenda of the Organization. Accordingly, he said, the Secretariat was expected to monitor the development of the Palestinian situation and provide a substantive report for the next Session.

12. The **Delegate of the Arab Republic of Egypt** expressed grave concern at the serious developments in the Middle East. He stated that the topic being discussed by this Organization focused on the flagrant legal violations being committed by the Israeli occupation forces in violation of the Fourth Geneva Convention of 1949. Replacing the native population of Palestine with Jewish citizens, tantamounted to collective punishment. He recalled that this also tantamounted to illegal use of sanctions. The recent developments witnessed in the occupied Palestinian Territories were in response to the Israeli provocation and the way the Israelies were treating the unarmed Palestinian civilians shed light on the brutality and violation of human rights of Palestinians. The Israeli practices were in contravention of all established principles of international law. The confinement of a Head of State by Israel had been universally condemned by regional, international as well as non governmental organizations. The League of Arab States, OIC, NAM as well as the Extraordinary Session of UNGA in 2001 had condemned Israel for using excessive force against the Palestinians.

He reiterated his full support for the efforts of Crown Prince Abdullah of Saudi Arabia and welcomed the recent Security Council Resolutions 1397, 1402 and 1403, in particular, the vision which they affirmed of a region in which two states Israel and Palestine could live side by side within secure and recognized borders.

13. The **Delegate of Indonesia** thanked the Secretariat for preparing the document for this agenda item and also thanked the Deputy Secretary-General for his introduction to the said item.

He stated that the situation in the Middle East including in Palestine had reached an intolerable state of war in the occupied Palestinian Territory. Such developments could have dire consequences for the region in particular and for the world at large.

He recalled the UN Security Council Resolution 1397 (2002) which had demanded a cessation of all acts of violence, provocation, incitement and destruction as well as laid down a road map towards a comprehensive political settlement. The resolution had rightly designed the workable settlement of the very core of the problem, namely the creation of peace and the independent Palestinian State and the recognition of the exercise of inalienable right of the Palestinians to self-determination. That resolution had been further strengthened by the adoption of Security Council Resolution 1402 (2002). However, he stated that it was regrettable that these resolutions remained unimplemented.

He reiterated his Government's stand that lasting peace in the Middle East required the impartial implementation of Security Council resolutions 242 (1967) and 338 (1973) respectively and on the principle of land for peace. He also supported the struggle of the Palestinian people in their legitimate cause for the realization of their genuine right to a just self determination including their right for an independent state in their own land and territory within secure and recognized borders. He affirmed that the solution of the Palestinian question could never be found without the Palestinians gaining full independence and restoration of their inherent rights.

14. The Delegate of Qatar stated that the whole of the year 2001 and upto now in 2002 were marred by the incessant Israeli military campaign of war crimes and state terrorism against the Palestinian people and the Palestinian Authority. Leaders throughout the world were making all efforts to put the peace process back on its tracks. The Mitchell Commission's recommendations and the Tenet Plan were the road map that should lead to the possible resumption of the final status negotiations which are based on Security Council Resolutions particularly 242 and 328, the Madrid Principles and also the "land for peace principle". This alone could bring peace and security to the Middle East. This position of Qatar was reiterated by the Emir of the State of Qatar. He felt that there had to be a stop to the Israeli brutalities being perpetrated on the Palestinian civilians, these acts of Israel were in contravention of the principles enshrined in the Fourth Geneva Convention of 1949 as well as in the Universal Declaration of Human Rights.

He emphasized that AALCO could play an important and effective role in solving this problem which could be a threat to international peace and security. He suggested that AALCO should prepare a legal, ethical study of the problem and support the rights of Palestinian people by condemning the Israeli Practices.

15. The **Delegate of Pakistan** stated that a detailed account of reprehensible and horrendous acts, perpetrated by Israel on the Palestinian people, constituted war crimes, crimes against humanity and the worst kind of terrorist acts as was stated by the Delegates of Palestine and Islamic Republic of Iran. He fully subscribed to what had already been said.

He said that he could only pray that the perpetrators of such crimes are guided by the ever fresh wisdom of the sayings of a great military thinker "Never reduce your enemy to a corner without an outlet, because then he is the greatest enemy". He pondered over the saying and deduced that perhaps Israel had already reduced the peace loving and unarmed Palestinians to that corner.

16. The **Delegate of the United Arab Emirates** fully supported the other speakers who had spoken on this item, and also thanked the Government of the Islamic Republic of Iran for having referred this item on the agenda of AALCO. He was of the view that practical legal measures were needed to confront the criminal practices of Israel.

17. The **Delegate of Kuwait** supported the statements made by the other delegations. He strongly condemned the terrorist acts being perpetrated by Israel on the Occupied Palestinian Territories, which

were violative of the Fourth Geneva Convention of 1949. He requested for the immediate termination of the illegal Israeli practices.

18. The **Delegate of India** underscored that his Government continually stood by the Palestinian people and had actively supported peace initiatives in the Middle East and was committed to a just, comprehensive and lasting peace in the region based on the relevant Security Council resolutions. He supported the inalienable and legitimate right of the Palestinian people to a homeland as well as the right of all States of the region, to exist peacefully within secure and internationally recognized borders. He was convinced that the Palestinian people stood on the threshold of a new era wherein their national aspirations for which they had struggled for so long could be realized. He hoped that there would be peace, development and stability in the region and reiterated his Government stands to assist in whatever way it could.

He noted that an important issue that vitiated the atmosphere had been the establishment and expansion of Israeli settlements in the Occupied Palestinian Territory. The rapid growth and expansion of settlements, and establishment of new ones, had undermined mutual confidence as well as the credibility of the peace process. However, he was hopeful that Israel would respect the overwhelming sentiment of the international community for a freeze on all settlement activity.

He also noted that the plight of the Palestinian people living in the camps scattered in the West Asian region was distressing and the issue needed to be tackled urgently with the active encouragement and support of the international community. He reiterated that his Government stood ready to assist the Palestinian people in their hour of need.

19. The **Delegate of Sudan** supported all the delegations who wanted an immediate cessation to all the flagrant human rights violations being perpetrated by Israel on the innocent Palestinians and also supported the right of the Palestinian people to self determination and to their right to live in an independent State.

20. The **President** in his concluding remarks stated that "injustice anywhere is injustice everywhere". As Palestine was one of the members of this Organization, it was the moral responsibility of all the Member States to give collective support to the cause of Palestine in all other fora where they were to be represented. He underscored the point that Israel could not exist peacefully unless there was a State of Palestine. This bloodshed was taking innocent lives on both sides and the lives of ordinary citizens, be they Israelis or Palestinians, were jeopardized. He emphasized that States which were supporting Israel should take up the case of an independent State of Palestine as a priority matter, that alone, could bring about peace in the region.

21. **Comment received from the Government of Malaysia:** Malaysia had always been supportive of the struggle of the Palestinian people and condemn the aggressive activities of the Israelis towards civilians in the occupied territory. The Extraordinary Session of the Organization of the Islamic Conference (OIC) of Foreign Ministers recently held in Kuala Lumpur bears testimony to this. At that Session, Malaysia along with the other OIC Members condemned Israel for its escalating military campaign against the Palestinian people, including the daily brutalization and humiliation of its civilians, resulting in mounting casualties, strangulation of the Palestinian economy, systematic and indiscriminate destruction of houses and residential facilities as well as infrastructure, institutions and structures of the Palestinian National Authority.

Malaysia has also supported the various UN resolutions on the issue of Palestine. The adoption by the UN Security Council of Resolution 242 of 22 November 1967, which emphasized the international principle of the 'inadmissibility of the acquisition of territory by war', affirmed that the peace in the Middle East should be based on the 'withdrawal of Israeli armed forces from the territory occupied' and 'the termination of all claims of all states of belligerency and respect for an acknowledgement of the sovereignty, territorial integrity and political independence of every state in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force'. Malaysia noted

that this Resolution together with the principle of returning the land in exchange for peace became the basis of the Middle East peace process. However, despite international condemnation, until today, certain parts of the Palestinian territory remain under Israeli occupation.

Malaysia is of the view that the Security Council cannot simply ignore, wish away or sweep the issue affecting the Palestinian people under the carpet. Malaysia supports the cause of peace and the peace process. But the current situation in the Occupied Palestinian Territory requires the immediate establishment of a UN Protection Force to complement the peace process.

Malaysia reiterates that the use of force against civilians by the Israeli authorities is in violation of the Fourth Geneva Convention. The Fourth Geneva Convention made it illegal to commit or order others to commit "grave breaches" of the Convention. Article 147 defines "grave breaches" as "...willful killing, torture or inhumane treatment, willfully causing great suffering or serious injury to the health, unlawful deportation or transfer or serious injury to the health, unlawful deportation or transfer or unlawful confinement of a protected person, willfully depriving a protected person of the rights of fair and regular trial, taking and extensive destruction and appropriation of property...".

The applicability of the Fourth Geneva Convention to the Occupied Palestinian Territory including Jerusalem and other Arab territories occupied by Israelis has been reaffirmed in the Security Council Resolutions and in numerous Resolutions of the General Assembly and other bodies of UN. The Fourth Geneva Convention provides protection to the civilian population who find themselves in the hands of a belligerent State or occupying power of which they are nationals "at any given moment in any manner whatsoever" (Article 4) and "in all cases of partial or total occupation" (Article 2).

Malaysia is of the view that the Palestinian issue warrants serious international commitment. Malaysia urges Member States of AALCO to enhance their efforts in enforcing the existing UN Resolutions on Palestine and supporting efforts towards achieving a lasting peace in the Middle East.

The meeting then took up for consideration the item **"Legal Protection of Migrant Workers"**.
22. **The Secretary-General, Amb. Dr. Wafik Z. Kamil** introduced the Secretariat document No. AALCO/XLI/ABUJA/2002/S.5. He recalled that the item "Legal Protection of Migrant Workers" was placed on the Agenda of the 35th Session held in Manila upon a reference by the Government of Philippines and since then had been considered at successive sessions thereafter. Subsequent to the 39th Session held in Cairo the Secretary-General visited the IOM Office in Geneva and met the Director General Mr. Brunson McKinley, and they discussed the areas of co-operation between the two Organizations. On his invitation, the Director General visited AALCO Headquarters in New Delhi on the 6th of October 2000. At that occasion a Co-operation Agreement between the two Organizations was signed. It was the beginning of an effective partnership between the two Organizations in matters pertaining to the protection of migrants. One of the tangible outcomes of that Agreement was a one-day Special Meeting in conjunction with the AALCO's 40th Session in New Delhi last year on "Some Legal Aspects of Migration."

He noted that it was quite evident from the presentations made and discussions that followed that globalization had created movements of population, creating a number of problems and the solution lay in seeking enhanced international as well as bilateral co-operation between countries of origin and countries of destination and there was the need to harmonize the interests of sending and receiving states. The deliberations at that meeting provided useful insight into the various areas of migration both legal and illegal.

Resolution SP/1 "Special Meeting on Some Legal Aspects of Migration" adopted on 24 June 2001 at the 40th Session of AALCO (New Delhi HQ) inter alia directed the Secretariat to explore the feasibility of drafting a Model Agreement for Co-operation among Member States on issues related to migrant workers and requested the Secretary -General to consider the possibility of convening an open-ended working group for in-depth consideration of these issues.

He stated that, subsequent to the conclusion of the 40th Session, the Secretariat was engaged in other pressing matters and could not convene an Open-Ended Working Group Meeting. However,

pursuant to the mandate of the 40th Session the AALCO Secretariat, in consultation with the IOM prepared a "Draft Model Regional Co-operation Agreement Between States of Origin and States of Destination/Employment within AALCO Member States".

As the AALCO's membership comprises of States in both categories i.e. sending as well as receiving it was felt that the preparation of such an instrument could serve as a Model Regional Co-operation Agreement between Member States in matters concerning the protection of migrant workers and the management of migration. It could also help them in concluding bilateral agreements.

He was of the view that such an agreement could contribute to the regional and multilateral efforts to resolve in an efficient manner issues relating to migrant workers and the management of migration in particular.

He informed the meeting that the draft was circulated to all Member States in English as well as in Arabic with a view to seek their comments and suggestions. The Secretariat was awaiting the comments. The 41st Session, he said, provided an opportunity to seek the views of Member States. Further, if the Member States considered it useful an inter-sessional Expert Group Meeting could be convened in order to consider in-depth the Draft Regional Co-operation Agreement and refine it in as per the suggestions of the Member States. This revised text then could be placed for consideration at the 42nd Session of AALCO for further refinement or adoption.

23. The **Delegate of Japan** affirmed that the topic had been one of the most important issues for several member countries. In this regard, he highly appreciated the work done by the Secretariat in co-operation with the IOM, and believed that the draft model agreement would be a good base for deliberations. He informed the meeting that the draft model agreement was being carefully considered within their government and the Government of Japan would as soon as possible submit its written comments to the Secretariat.

24. The Delegate of Republic of Korea thanked the Secretary-General for his excellent presentation on the topic and said that globalization, the development of information technology, and the explosion of transborder activities had become the hallmark of our age. Despite the overall increase of wealth, the gap between the rich and poor and easier movement of persons and materials across borders, had in turn led to the growth of migrant workers. Although immigration and movement of persons across national boundaries had existed throughout history, the unprecedented scale of migrants affected almost every country in the world.

He underscored the fact that the Asian and African regions were no exception and that the topic of migrant workers was an important one. The two regions contained both countries of origin and destination, including many countries that were both at the same time. He welcomed the preparation of the Draft Model Agreement by the AALCO Secretariat and the IOM. His delegation was of the view that the adoption of the Draft Agreement would be recorded as an important achievement and contribution by the AALCO to international law. If adopted, the Agreement would be especially valuable because the International Convention on the Protection of the Rights of all Migrant Workers and members of their families, adopted by the United Nations in 1990, had not yet entered into force. He pointed out that some clauses in the model agreement differed from existing Korean Domestic Law. However, as discussions on the draft had just begun, he hoped that member countries would actively participate in expressing their views.

He emphasized that the Government of the Republic of Korea attached much importance to the issue of migrant workers. As a result of globalization, many foreigners lived and worked in Korea, whereas many Koreans lived and worked overseas. Understanding the many difficulties migrant workers experienced due to differences in language, custom and culture, the Korean government was doing its best to ensure that legal residents could lead a stable and sound life in Korea. However, he pointed out that the number of illegal workers had also rapidly increased. For the 250,000 illegal workers who had voluntarily reported their illegal status, the Korean government had given a one year long preparation period for their departure and had waived their fines and re-entry restrictions.

In conclusion, he said, that his Government recognized the contributions of migrant workers, economically, socially and culturally, to both their native and host countries. He looked forward to active and constructive discussions on the Draft Model Agreement.

25. The **Delegate of Indonesia** appreciated the Secretariat for the preparation of the document on the item, which provided useful briefing concerning the draft model cooperation agreement. While agreeing that the existence of migrant workers gives mutual benefit to both parties, i.e. states of origin and destination, in developing both countries, he was of the view that human rights protection to the migrant workers is very important as they were exposed to the possibility of exploitation, violation and discrimination, particularly women migrant workers.

He recognized that women migrant workers, especially those working in the informal sectors or domestic sectors were very vulnerable to be exploited and abused in the destination states. Indonesia, he said, encourages the destination States to give special attention particularly to women migrant workers through continuing policies and implementing related training programmes.

In line with the aforementioned, the Government of Indonesia supported the efforts to discuss and finalize the Draft Model Regional Co-operation Agreement between states of origin and destination/employment within the AALCO Member States. He said, the details of the Indonesian comments on the Draft Model Agreement would be communicated to the Secretariat.

26. Comments received from the Government of Malaysia

Domestic Legislative Framework

1. Malaysia has adequate laws to deal with the legal protection of migrant workers.

Basic Human Rights/Fundamental Liberties

2. The basic principles of human rights are applicable to migrant workers apart in addition to the rights provided by statute. A migrant worker is entitled to proper housing facilities with basic utilities like water and electricity for peace and enjoyment. Apart from that the fundamental liberties as enshrined under Part II of the Federal Constitution are, subject to applicable law, also applicable to migrant workers.
3. These include the right to life and personal liberty, the right to be informed of the grounds of arrest and to consult and be defended by a legal practitioner of his choice, freedom of movement, the right not be subjected to forced labour and freedom of religion.

International Conventions

4. Malaysia is not a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. However, to a large extent the protections to be accorded to migrants for employment which are referred to in that Convention have been recognized in the ILO convention No. 97, namely, the Convention concerning Migration for employment, of which Malaysia has been a party since 3 March 1964.

Recruitment Procedures and conditions for Employment

5. The Immigration Department of Malaysia has imposed several conditions with regard to an application for a Visit Pass (Temporary Employment) for all sectors comprising plantation, construction, manufacturing, services and domestic help. A sample of the procedures and conditions for employment is attached and marked as Annex B.

Problems Faced by Malaysia vis-à-vis Migrant Workers

6. The main problems faced by Malaysia with the influx of the migrant workers has been mainly social in nature. Such problems include the spread of communicable diseases like leprosy, tuberculosis, malaria, cholera, typhoid and HIV, desertion by the domestic helpers and the commission of criminal offences.

Position on draft Model Agreement

7. Malaysia supports the idea of working towards developing a draft Model Agreement to address the issues relating to the protection of legal migrant workers.
8. However, after a perusal of the provisions of the draft Model Agreement which was circulated to Member States, Malaysia has strong reservations on some of the proposed provisions of the draft Model Agreement. The main provisions on which Malaysia has reservations will be reflected in the study which will be prepared by the Secretariat on the Draft Model Agreement after it has received comments from other Member States.

The meeting then took up for consideration the item **“Establishing Co-Operation against Trafficking in Women and Children.**

27. **Mrs. Toshiko Shimizu, Deputy Secretary-General** introduced document No. AALCO/XLI/Abuja/2002/S.9. She stated that although trafficking in women and children was not a new practice, the growth in volume and complicity had meant an increase in official and public awareness on trafficking and of the needs to address its negative implications.

She said that trafficking in human beings had become a global business, generating huge profits for traffickers and organized crime syndicates, creating serious problems for governments of countries involved and exposing the victims to exploitation and violation of their fundamental human rights.

She stated that, it was encouraging to note that most of the AALCO Member States were already Parties to the Convention on the Elimination of all Forms of Discrimination against Women as well as the Convention on the Rights of the Child. This could facilitate in addressing these issues effectively and systematically through relevant bodies and mechanisms.

As regards the United Nations Convention against Transnational Organized Crime and its Protocols, she stated that out of the 140 signatory parties 27 were Member States of AALCO and among 6 who had ratified the Convention. An early ratification of the Convention and its Protocols specially the Protocol to Prevent, and Suppress and Punish Trafficking in persons especially Women and Children would go a long way in dealing with the crime of trafficking. The resolution adopted on this subject during the 40th Session had inter alia, urged Member States to consider signing and ratifying the UN Convention against Transnational Organized Crime and its Protocols, as well as, requested them to transmit to the AALCO Secretariat their national legislations and other relevant information related to the topic.

She said that the response received from Member States was indeed very encouraging, seventeen States had responded. She thanked all of them. The aforementioned document contained brief summaries of those responses. This was only for information of Member States and the materials would be useful to the Secretariat in drafting a model legislation on this topic.

She noted that communications received from the Member States in respect of national legislations showed that even though many countries did not have anti-trafficking legislation's per se however, provisions in other domestic laws dealt with the offence of trafficking in women and children. This clearly demonstrated that serious attention is being given to this problem by the Asian and African states.

She suggested that significant step for protection against trafficking in women and children could be the formulation of a model legislation, reflecting the dispositions of International Instruments, as well

as national legislation of Member States a proposal which was supported during the 40th session. The preparation of a model legislation could facilitate consideration by Member States of becoming parties to the UN Convention Against Transnational Organized Crime and its Protocols. This task could be accomplished with the technical assistance and effective co-operation from the IOM and OHCHR with whom a Co-operation Agreement and Memorandum of Understanding were signed in the years 2000 and 2001 respectively.

She informed the meeting that many countries planned an overhaul and improvement of current legislations. It is hoped that international co-operation, would curtail the incidence of trafficking and lead to the development of integrated legal frameworks. However, it must not be forgotten that the problem of trafficking in women and children is not only one of poor legal framework and a lack of well-intentioned plans. The problem is of implementation.

It was also necessary, she said, to simultaneously go into the root causes of trafficking and exploitation in all its forms, which is fixed very firmly upon why, and how, women and children enter this industry. Poverty, inequitable economic systems, and discrimination against females are terrible burdens for many women and children throughout the world.

In this connection, she proposed that a seminar on the topic may be organized by the Secretariat to facilitate in-depth study on the subject especially the necessity and feasibility of drafting of any model legislation with the technical assistance of IOM and OHCHR, she sought directions from the Member States about the future course of action.

28. The **Delegate of the United Arab Emirates** stated that even though the phenomena of trafficking in women and children did not exist in UAE, he lent full support to the proposal of the Secretariat in drafting a model legislation or guidelines on the subject with the technical assistance of IOM and OHCHR.

29. The **Delegate of Kuwait** stated that the crime of trafficking against women and children could be equated to slavery. In his view this was one of the most reprehensible crimes, which should be treated as a war crime. The fundamental rights of the trafficked person were threatened at national as well as international levels, thus there was need to strengthen protection of these victims at both levels. He informed that the State of Kuwait had enacted a law to criminalise trafficking in women and children, the punishment imposed for the crime could act as a deterrent. Further, the State of Kuwait had entered into many agreements to prevent this menace.

30. The **Delegate of the State of Qatar** stated that trafficking in human beings had become a global business generating huge profits for traffickers and organized crime syndicates, creating serious trans-boundary problems for governments of countries involved and exposing the victims to exploitation and violation of their fundamental rights. At this juncture what was needed was strong international co-operation to combat this crime. He informed that the State of Qatar had ratified several international conventions, and had produced a number of studies, which had tried to identify the causes, which lead to trafficking in women and children and the possible solutions to ending the problem.

31. The **Delegate of the Republic of Korea** stated that the process of globalization had promoted economic prosperity, but had also enlarged the gap between the rich and the poor. It had made the free flow of human beings easier and had also undermined the control of nations over their borders. The world was increasingly confronted with a host of transnational crimes, such as drug trafficking, international piracy, money laundering and trafficking in people.

He stressed that these phenomena lay at the heart of many serious problems across national boundaries and could not be solved without effective international co-operation. It was estimated that every year 700,000 people were trafficked around the world. Among them were a high number of women and children. This infringement of human rights could be described as a modern form of slavery that calls for urgent international co-operation. International co-operation is especially necessary since trafficking in persons is generally organized by international criminal organizations, which use secret financing and

illegal money laundering to sustain their activities and frequently rely on forged documents in smuggling and trafficking human beings.

It was against this backdrop, that the international community had adopted the UN Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children. His delegation believed that the treaty would greatly contribute to the international efforts against transnational organized crime and the protection of women and children who were victims of trafficking. Many governments, including the Republic of Korea had signed the Convention and Protocol, he hoped that countries would be able to ratify it and achieve early entry into force. He believed this was especially relevant for countries in the Asian and African regions, where illegal trafficking was posing a serious problem.

In conclusion, he emphasized the importance of raising public awareness to ensure that victims of trafficking, who had undergone various types of harsh exploitation, receive proper protection. He hoped that discussion within the AALCO would contribute towards the international efforts against this social evil.

32. The **Delegate of Nigeria** called on AALCO to further address this important issue of human trafficking, which had been described as one of the most despicable human rights violations of our time. This nefarious practice motivated by easy profit thrived on a criminal act against women and children. It was regrettable that many African women and children had been victims of this abuse and violation of human rights. As an indication of the commitment to the eradication of this practice, Nigeria was among the first signatories to the UN Convention Against Transnational Organized Crime and its Protocol. It was against this backdrop that the first Pan-African Conference on Human Trafficking was convened last year in Abuja, Nigeria by the Women Trafficking and Child Labour Eradication Foundation (WOTCLEF) an NGO, founded by Mrs. Titi Abubaker Atiku, Wife of the Vice-President of Nigeria. Nigeria also intended to organize an international conference aimed at drawing the world's attention to these obnoxious practices. He hoped that the international community would respond to this clarion call and help to eliminate these acts against women and children.

33. The **Delegate of Indonesia** stated that transnational organized crime is truly international in nature and has increasingly become a global concern since the menace of this crime has no boundary. The rapid growth in the flow of people and goods as a result of globalization had brought about dramatic changes in coping with criminality. Without effective law enforcement, criminals would continue to disrupt law and order. It was a matter of common awareness that no country would be able to effectively combat transnational organized crime without fostering international co-operation.

He informed the meeting that the Government of Indonesia had signed the UN Convention against Transnational Organized Crime, the Protocol to prevent Trafficking in Persons, Especially Women and Children; and the Protocol Against the Smuggling of Migrants. At present the Government was in the process of ratifying both the Protocols. Indonesia had also ratified the UN Convention on the Elimination of Any Forms of Discrimination Against Women (CEDAW), UN Convention on the Rights of the Child and other International Legal Instruments. The Indonesian Government urged other countries to sign and ratify the said Conventions as well as the relevant Protocols.

34. The **Delegate of India** recalled that during the 40th Session, the delegation of India had outlined the constitutional and legal provisions available in India where severe penalties had been laid down for trafficking. The Supreme Court of India had issued various orders and in pursuance of such orders, a Committee on Prostitution, Child Prostitution and children of Prostitution was set up which made an in-depth study of the process and submitted a detailed Plan of Action.

The National Plan of Action was adopted in 1998 to combat Trafficking and Commercial Sexual Exploitation of Women and Children through strategies that cover prevention, legislation and law enforcement, Providing of basic services to the victims of prostitution, rescue and rehabilitation, awareness generation and social mobilization. The implementation of the Plan of Action was being co-ordinated and monitored by the Central Advisory Committee on Child Prostitution. The objective of the

Plan of Action was to reintegrate women and child victims of prostitution in society. She noted with concern that trafficking in women and children had become a major issue of regional concern. It was also part of the increasing global narco-terrorist criminal network with transnational implications. While trafficking within the borders of the country had been a problem since long, the rise in inter-country trafficking had assumed larger dimensions in the recent past. She then briefly dwelt on the various factors responsible for the menace.

She also noted that the Heads of State of SAARC region at the Male Summit had expressed grave concern at the trafficking of women and children in the SAARC region both intra and inter-state and pledged to co-ordinate their effort and take effective measures to address this problem. Following the Summit, Member States of the SAARC were able to finalize in 1998 the Draft Convention on Combating the Crime of Trafficking in Women and Children for Prostitution during the 10th Summit in Colombo. Through this convention, it is hoped to promote and foster effective regional co-operation to deal with the various aspects of the problem.

She further noted that India was in the process of completing its internal formalities for becoming a party to the Convention Against Organized Crime and its Protocol.

35. Comment received from the Government of Malaysia

1. Malaysia has undertaken a study of the UN Convention against Transnational Organized Crime, the Trafficking Protocol and the Smuggling Protocol.
 - Malaysia is currently awaiting Cabinet approval to become a signatory to the Convention.
 - The Ministry of Home Affairs is to co-ordinate the inter-agency study on the Trafficking Protocol and the Smuggling Protocol.
2. Malaysia's position in relation to the trafficking in persons issue may be summarized as follows:
 - Malaysia recognizes that trafficking in persons, especially women and children, is a serious problem in the Asian-African region with the increasing involvement of organized criminal groups. It is noted that trafficking in persons is now considered to be more profitable and less risky than drug trafficking.
 - Malaysia accepts the definition of "trafficking in persons" in the Trafficking Protocol subject to its domestic laws and policies. However, Malaysia does not agree with the generalization that all persons who are trafficked in this manner are victims in need of protection and thus should be immune from prosecution.
 - Malaysia draws a distinction between genuine victims of trafficking (as defined in the Protocol) and self/voluntarily trafficked persons who knowingly allow themselves to be trafficked to seek economic gain in destination countries. Thus, Malaysia does not consider all trafficked persons to be victims who should be immune from prosecution for offences such as prostitution.
 - Although Malaysian law does not specifically criminalize "trafficking in persons" as defined in the Trafficking Protocol, its laws already criminalize the component elements of that definition.
 - Malaysia also notes the existing international legislative framework on trafficking in persons. Generally, Malaysia supports these instruments and adheres to their principles.
 - Malaysian law already provides limited protective measures for victims and witnesses of crimes. Malaysia is now considering a more comprehensive Witness Protection Act. However, any assistance and protection would first require the person to be classified as a "victim of trafficking" according to Malaysian criteria.
 - At present, the police and immigration authorities only consider a trafficked person to be a victim if he or she makes a police report that he or she has been victimized.

- Malaysia already provides assistance to victims through the Social Welfare Department and NGOs subject to their financial and manpower resources. This assistance includes shelter, medical care and legal or other counseling.
 - Malaysia already makes special arrangements to temporarily legalize the stay of victims of trafficking where their assistance or evidence is required in a pending criminal matter. However, there is no right to remain permanently in Malaysia or to seek employment while they are temporarily legalized for the purposes of assisting in a criminal matter.
 - Trafficked persons are immediately deported without being charged on any immigration offence unless they have committed other offences under Malaysian law or unless their assistance is required in criminal proceedings against the traffickers. Malaysia thus welcomes the requirement in Article 8 of the Trafficking Protocol that requires States Parties that are countries of origin to facilitate the repatriation of their nationals. However, less acceptable is the requirement in Article 8.2 that repatriation "shall preferably be voluntary".
 - Malaysia already has several bilateral and multilateral arrangements for co-operation to combat transnational crime, including to prevent and suppress trafficking in persons. This includes border and security arrangements with neighbouring countries, the use of INTERPOL and ASEANAPOL as well as the Agreement on Information Exchange and Establishment of Communication Procedures with the Republic of the Philippines and the Republic of Indonesia which was signed on 7 May 2002 in Kuala Lumpur. These instruments and arrangements provide for co-operation in criminal matters and border control and includes co-operation in the identification of the offender and victims, sharing information about modus operandi and routes used and the training of law enforcement personnel.
3. Malaysia's position in relation to the smuggling of migrants issue may be summarized as follows:
- Malaysia does not agree with the generalization that migration in itself is not a crime and that migrants should be considered as victims in need of protection. Malaysia makes a clear distinction between legal migrants and illegal migrants and overstayers.
 - Illegal migrants are persons who have entered Malaysia illegally in breach of Malaysia's immigration laws and thus are treated as offenders. However, in most cases they are immediately deported without being charged on any immigration offence unless they have committed other offences under Malaysian law.
 - Overstayers are migrants who entered Malaysia legally under work or social visit passes but have remained in Malaysia beyond the period of those passes or in breach of the conditions of those passes. Again the preferred method of dealing with them is deportation, where possible.
 - Malaysia has tried to facilitate legal migration through Government to Government arrangements and even offered regularization and amnesty exercises to reduce the number of illegal migrants with little success.
 - Malaysia recognizes that this matter cannot be resolved by it alone and requires the co-operation of both countries of origin and transit countries.
4. Malaysia notes the role being taken by international organizations such as IOM and OHCHR in this issue but maintains that this matter should be dealt with by the countries concerned bilaterally without the influence or interference by any third parties.

5. Malaysia participated at the World Conference against Racism, Xenophobia and Related Intolerance in Durban and supports the Durban Declaration and its proposed Programme of Action. In relation to the call to sign the relevant international instruments relating to trafficking in persons, Malaysia is already party to the following instruments.

Instrument	Date in force in relation to Malaysia
i) Convention on the Elimination of All 1979 and its Optional Protocol 1999 ¹	Convention – 5 July 1995 Forms of Discrimination against Women Not party to Protocol
ii) Convention on the Rights of the Child 89 and its 2 Option Protocols 2000	Convention – 17 February 1995
* The Ministry of National Unity is studying the 2 Optional Protocols with a view to recommending accession.	
iii) ILO Minimum Age Convention 1973 (No. 138)	9 September 1997
iv) ILO Worst Forms of Child Labour Convention 1999 (No. 182)	10 November 2000

As mentioned above, Malaysia is also considering signing the UN Convention against Transnational Organized Crime. Malaysia however, would like to make the point that it is capable of giving effect to its international obligations in this matter without necessarily being a State Party to these instruments. Membership to such instruments is a formality in most cases to show international solidarity on particular matter.

6. In relation to regional efforts, Malaysia, as a Member Country of the Association of South-East Asian Nations (ASEAN), is also actively involved in the implementation of the Trafficking in Persons component of the Work Programme to Implement the ASEAN Plan of Action to Combat Transnational Crime that was adopted at the 2nd Annual ASEAN Senior Officials Meeting on Transnational Crime in Kuala Lumpur on 17 May 2002.
7. Malaysia also participated at the Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crimes in Bali from 27 – 28 February 2002 which was attended by countries from the Asia-Pacific region. The Conference established 2 Ad Hoc Experts Groups chaired by New Zealand and Thailand respectively to deal with international co-operation issues and the international legislative framework. The Ad Hoc Experts Groups are scheduled to begin their work with meetings in August and September 2002. The results of the Ad Hoc Experts Groups meetings are to be reported back to a follow-up Ministerial Conference to be held in 2003.
8. Malaysia is not a Member of SAARC but welcomes the adoption of its Regional Convention on Combating the Crime of Trafficking in Women and Children for Prostitution to further the fight against the menace of trafficking in women and girls in that region.
9. Malaysia notes that many countries, Malaysia included, may need to overhaul and improve its current legislation on trafficking in persons and take measures, both bilaterally and multilaterally, to effectively combat trafficking in persons.

10. In this regard, Malaysia proposes that emphasis should also be given on tracing and forfeiting the proceeds of the crime of trafficking in persons through effective anti-money laundering legislation in addition to the measures already proposed for prevention, prosecution, international co-operation and protection of victims. Malaysia has already made the existing trafficking in persons offences under its laws predicate offences for the purposes of its Anti-Money Laundering Act 2001 which came into operation on 15 January 2002.
11. Thus Malaysia supports the proposal for an in-depth study by the Secretariat on this matter with the possibility of formulating model legislation which reflects the dispositions of relevant international instruments. Malaysia notes that this proposal was first mooted during the 40th Session. Malaysia also supports the convening of a seminar or expert group meeting if this is considered necessary. However, Malaysia is of the opinion that this forum of the AALCO, which comprises legal experts from Asia and Africa, is fully competent to address the issue of drafting model legislation without the technical assistance of IOM or OHCHR.
12. It is proposed that, depending on the views expressed by other AALCO Member States, Malaysia may also consider supporting a further resolution that the Secretariat monitors the developments in this matter.
(The Meeting was thereafter adjourned)